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**Anheuser-Busch, LLC and Teamsters Local 1149.**  
Case 03–CA–196263

August 16, 2017

**DECISION AND ORDER**

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE  
AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and an amended charge filed on April 5 and May 16, 2017, respectively, by Teamsters Local 1149 (the Union), the General Counsel issued the complaint on May 16, 2017, alleging that Anheuser-Busch, LLC (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain and to provide information following the Union's certification in Case 03–RC–185455. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.<sup>1</sup>

On June 2, 2017, the General Counsel filed a Motion for Summary Judgment. On June 6, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The Respondent denies its refusal to bargain, and contests the validity of the Union's certification of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the Regional Director improperly found that Stacy Olson is not a confidential employee and thus is eligible to vote, and its contention that, consequently, the Union

<sup>1</sup> In its answer to the complaint, the Respondent states that its correct name is Anheuser-Busch-InBev, and in its response to the Board's Notice to Show Cause, the Respondent states that its correct name is Anheuser-Busch Commercial Strategy, LLC. However, in the underlying representation proceeding, the Respondent stipulated that its correct name is as reflected herein.

was not properly certified as the bargaining agent of the unit.<sup>2</sup>

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent admits, that on November 16, 2016, by letter, the Union requested the following information:

- (1) The name, address, classification, base rate of pay, date of birth, and date of hire of each bargaining unit employee on the payroll during the most recent social security quarter.
- (2) The straight-time hourly rate for all bargaining unit employees in the last social security period, including cost of living and premium pay, but excluding shift and overtime premiums.
- (3) The starting, minimum and maximum wage (salary) rates for all bargaining unit employees.
- (4) Information on incentive plan(s), bonuses, cost-of-living payments, and overtime worked during the four most recent social security quarters for all bargaining unit employees.
- (5) The total and average hours worked during the four most recent social security quarters for all bargaining unit employees.
- (6) The total number of bargaining unit employees who qualified for shift premium, holiday, funeral leave, report-in-time, call-in-time, sick leaves, leaves of absence, jury duty, vacation and all other

<sup>2</sup> In its answer to the complaint, the Respondent denied several of the complaint's allegations, including the allegation that the Union requested bargaining; the allegation that it refused to bargain with the Union as the exclusive bargaining representative of the unit; and the allegation that the requested information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Nonetheless, in its response to the Board's Notice to Show Cause, the Respondent states that, "[o]n November 23, 2016, the [Respondent] advised the Union that it would not bargain with it, nor honor its information request," and it also acknowledges that on November 16, 2016, the Union requested that the Respondent recognize it as the exclusive collective-bargaining representative of the unit. We find that the Respondent's denials do not raise an issue warranting a hearing in this proceeding.

- fringe benefits during the past calendar year. Please include a description of such benefits if a description is not included in the Employee Handbook and/or Personnel Manual reference in #19 below.
- (7) The total cost and cost per hour/month worked of each of the fringe benefits enumerated in #6 above for all bargaining unit employees.
  - (8) A distribution of bargaining unit employees by hour (weeks) of vacation entitlement for the current calendar year for all bargaining unit employees.
  - (9) Up-to-date benefit summaries and copies of financial and other reports (including premium payments or premium equivalents) covering medical, prescription drug, dental, vision, life insurance, sickness and accident, retirement, legal services, child care and any similar programs that cover current bargaining unit employees.
  - (10) With respect to medical insurance, please provide a statistical profile of the current bargaining unit, i.e. age, type of coverage elected, number of covered dependents and claims experience for each of the following category of benefits; medical, prescription drug, dental and vision.
  - (11) The type of medical plan(s) currently offered to all bargaining unit employees, i.e. Indemnity, HMO, PPO, POS, EPO and a copy of the Summary Plan Description(s) including schedules of benefits.
  - (12) The monthly premiums or premium equivalents for the current medical, prescription drug, dental and vision plans offered to bargaining unit employees. Please indicate whether the premium or premium amounts are for Family, Employee + 1, Single or composite rates.
  - (13) The portion of the current premiums or premium equivalents that are paid by the employer and bargaining unit employees.
  - (14) The annual increase (in percentages) in medical premium or premium equivalent costs for the current Plan(s) referenced in #12 above for the years 2014, 2015 and 2016.
  - (15) Copies of all current job descriptions applicable to bargaining unit employees.
  - (16) Copies of all scheduling, shift selection procedures and definitions for the regular workweek, work day and overtime for all bargaining unit employees.
  - (17) Copies of all disciplinary notices and/or negative reviews/evaluations issued during the latest calendar year for all bargaining unit employees.

(18) Copies of all Employer rules and/or regulations applicable to bargaining unit employees and the disciplinary procedure if not included in the Employee Handbook and/or Personnel Manual referenced in #19 below.

(19) A copy of the current Employee Handbook and/or Personnel Manual applicable to bargaining unit employees.

It is well established that the foregoing type of information concerning the terms and conditions of employment of unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2003). The Respondent has not asserted any basis for rebutting the presumptive relevance of this information. Rather, the Respondent raises as an affirmative defense its contention, rejected above, that the Union was improperly certified. We find that the Respondent unlawfully refused to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Baldwinsville, New York (the Respondent's facility), where it has been engaged in the operation of a brewery.

Annually, the Respondent, in conducting its business operations described above, purchases and receives at its Baldwinsville, New York facility goods and materials valued in excess of \$50,000 directly from points outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Certification*

Following the representation election held on November 1, 2016, the Union was certified on November 15, 2016,<sup>3</sup> as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Lead Labor Schedulers and Administrative Office employees employed at the Respondent's Baldwinsville, New York facility; excluding guards, confidential employees, professional

<sup>3</sup> On May 11, 2017, the Board denied the Respondent's Request for Review. 365 NLRB No. 70 (2017).

employees and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

#### *B. Refusal to Bargain*

By letter dated November 16, 2016, the Union requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since that date, the Respondent has failed and refused to do so. By the same letter dated November 16, 2016, the Union requested that the Respondent furnish it with the information set forth above that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about November 23, 2016, the Respondent has failed to provide the requested information. We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with and an unlawful failure and refusal to provide the requested information to the Union in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing since November 16, 2016, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, and by failing and refusing since about November 23, 2016, to furnish the Union with the requested information described above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the information it requested on November 16, 2016.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

#### ORDER

The National Labor Relations Board orders that the Respondent, Anheuser-Busch, LLC, Baldwinsville, New York, its officers, agents, successors, and assigns shall

##### 1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Teamsters Local 1149 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish the Union with requested information it requested on November 16, 2016, which is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Lead Labor Schedulers and Administrative Office employees employed at the Respondent's Baldwinsville, New York facility; excluding guards, confidential employees, professional employees and supervisors as defined in the Act, and all other employees.

(b) Furnish to the Union in a timely manner the information requested on November 16, 2016.

(c) Within 14 days after service by the Region, post at its facility in Baldwinsville, New York, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 16, 2017.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 16, 2017

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Philip A. Miscimarra, Chairman

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Teamsters Local 1149 as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT fail and refuse to provide the Union with the information it requested on November 16, 2017, which is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All full-time and regular part-time Lead Labor Schedulers and Administrative Office employees employed at our Baldwinsville, New York facility; excluding guards, confidential employees, professional employees and supervisors as defined in the Act, and all other employees.

WE WILL furnish to the Union in a timely manner the information requested on November 16, 2016.

ANHEUSER-BUSCH, LLC

The Board's decision can be found at [www.nlrb.gov/case/03-CA-196263](http://www.nlrb.gov/case/03-CA-196263) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

